

New Jersey Turnpike Authority

P.O. Box 5042, Woodbridge, NJ 07095



August 31, 2017

Document Change Announcement

2016 Standard Supplementary Specifications

Americans with Disabilities Act

DCA2017SS-05

Subject: Revisions to

Section 106 Legal Relations And Responsibility, Subsection 106.19 Risks Assumed By The Contractor

Description of Change:

Refer to the attached Document Change Request form for more information.

Notice to NJTA Staff and Design Consultants:

Effective immediately, all contracts currently in the design phase shall incorporate the revisions herein. For advertised contracts awaiting the opening of bids this revision may be incorporated via addendum. Contact your NJTA Project Manager for instruction.

The revisions may be accessed on the Authority's webpage: <http://www.state.nj.us/turnpike/professional-services.html>

Recommended By:

A handwritten signature in blue ink, appearing to read "JL Williams", written over a horizontal line.

8-31-17

J. Lawrence Williams, P.E.
Deputy Chief Engineer - Construction

Approved By:

A handwritten signature in blue ink, appearing to read "Robert J. Fischer", written over a horizontal line.

Robert J. Fischer, P.E.
Chief Engineer

Distribution: Senior Staff Engineering, Law, Maintenance & Operations Depts., UTCA, AGC, CIAP, All Prequalified Consultant Firms, File

SECTION 106 - LEGAL RELATIONS AND RESPONSIBILITY

106.19 Risks Assumed by the Contractor

Replace the 1st paragraph with the following:

The Contractor assumes the following distinct and several risks, whether they arise from acts or omissions, and whether or not resulting from the negligence of the Contractor, its subcontractors, suppliers, materialmen, employees, agents and all others working for the Contractor on the Project, or of the Authority, or of third persons, or from any other cause, and whether such risks are within or beyond the control of the Contractor, excepting only risks which arise from solely affirmative acts done by the Authority subsequent to the execution of the Contract with actual and willful intent to cause the loss, damage and injuries described in Paragraphs (A) through (C) below.

The Contractor shall indemnify and save harmless the Authority, and the Authority's agents, against all claims described in Paragraphs (B), (C), and (D) below, and for all expenses incurred by the Authority in the defense, settlement or satisfaction thereof, including expenses of attorneys. If so directed, the Contractor shall at his own expense defend against such claims, in which event he shall not without obtaining express advance permission from the Authority raise any defense involving in any way jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority, or the provisions of any statutes respecting suits against the Authority.

The provisions of this Subsection shall also be for the benefit of all officers, agents, and employees of the Authority so that they shall have all the rights which they would have under this Subsection if they were named at each place above at which the Authority is named, including a direct right of action against the Contractor to enforce the foregoing indemnity, except, however, that the Authority may at any time in its sole discretion and without liability on its part cancel the benefit conferred on any of them by this Subsection.

Neither the acceptance of the Project by the Authority nor the making of final payment shall constitute a release of the Contractor from any liabilities arising under this Subsection. Moreover, neither the enumeration in this Subsection nor the enumeration elsewhere in the Contract of particular risks assumed by the Contractor or of particular claims for which he is responsible shall be deemed: (a) to limit the effect of the provisions of this Subsection or of any other provision of the Contract relating to such risks or claims, (b) to imply that he assumes or is responsible for risks or claims only of the type enumerated in this Subsection or in any other provision of this Contract, or (c) to limit the risks which he would assume or the claims for which he would be responsible in the absence of such enumerations.

The Contractor expressly understands and agrees that any insurance protection required by the Contract, or otherwise provided by the Contractor, shall in no way limit the Contractor's responsibility to defend, indemnify, and save harmless the Authority as herein provided. Such insurance requirements are designed to provide greater assurance to the Authority that the Contractor will be financially able to discharge his obligations under this Subsection and as to the risks assumed elsewhere in the Contract and shall not in any way be construed as a limitation on the nature and extent of such obligations.

Delete the last 4 paragraphs of this Subsection and replace with the following:

(E) Risk of Americans with Disabilities Act Claims

The Contractor and the Authority do hereby further agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "ADA Act") (42 U.S.C. §12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereunto, are made a part of this Contract. In providing any aid, benefit, or service on behalf of the Authority pursuant to this Contract, the Contractor agrees that the performance shall be in strict compliance with the ADA Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the ADA Act during the performance of this Contract, the Contractor shall defend the Authority in any action or administrative proceeding commenced pursuant to this ADA Act. The Contractor shall indemnify, protect, and save harmless the Authority, its agents, servants, and employees from and against any and all suits, claims, losses

demands, or damages, or whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Contractor shall at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the Authority grievance procedure, the Contractor agrees to abide by any decision of the Authority which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the Authority or if the Authority incurs any expense to cure a violation of the ADA Act which has been brought pursuant to its grievance procedure, the Contractor shall satisfy and discharge the same at its own expense.

The Authority shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If any action or administrative proceedings is brought against the Authority or any of its agents, servants, and employees, the Authority shall expeditiously forward or have forwarded to the Contractor every demand, complaint, notice, summons, pleading, or other process received by the Authority or its representatives. It is expressly agreed and understood that any approval by the Authority of the services provided by the Contractor pursuant to this Contract will not relieve the Contractor of the obligation to comply with the ADA Act and to defend, indemnify, protect, and save harmless the Authority pursuant to this paragraph. It is further agreed and understood that the Authority assumes no obligation to indemnify or save harmless the Contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Contract. Furthermore, the Contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in this Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude the Authority from taking any other actions available to it under any other provisions of the Contract or otherwise at law.